

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MARIO LACY,)	
Plaintiff)	C.A No. 04-11492 REK
)	
v.)	PLAINTIFF MARIO LACY'S RULE 56.1
)	STATEMENT AND SUPPORTING EXHIBITS
WILLIAM J. FEENEY, KENNETH)	
HEARNS, JEAN ACLOQUE)	
and the CITY OF BOSTON,)	
Defendants)	

Pursuant to Fed. R. Civ. P. 56, the Plaintiff requests that this Honorable Court grant plaintiff's motion for summary judgment. As grounds therefor, plaintiff submits his Motion For Summary Judgment And Incorporated Memorandum Of Law filed contemporaneously herewith, and provides the following statement of undisputed material facts and accompanying exhibits:

1. On July 14, 2001, Defendant Officer Kenneth Hearn observed plaintiff on Marvin Street in Roxbury. Hearn believed plaintiff was making a drug deal. (*Ex. A*, Deposition of Kenneth Hearn at 13.) Hearn believed he had had probable cause to arrest plaintiff. (*Id.* at 14.) However, Hearn did not arrest him. (*Id.*)
2. A short time later Hearn saw plaintiff on Marvin Street near a dumpster. (*Id.* at 22.) He saw him take an object out to the dumpster. (*Id.* at 22-23.) Plaintiff then went up Marvin Street and towards Washington Street, where he was stopped by two members of the drug control unit. (*Id.*) Defendant Hearn, along with Defendant Sgt. Feeney and Defendant Acloque then approached plaintiff. (*Id.* at 27-28.) The officers again believed that there was probable cause to arrest plaintiff. (*Id.* at 29; *Ex B*, Deposition of William Feeney at 8)
3. According to defendant Hearn, Officer Juan Seoane conducted a pat-down search of plaintiff and searched plaintiff's pockets. (*Ex. A*, at 31, 32)
4. Defendant Feeney directed Defendant Hearn that, "if he thought he had something on him to search him." (*Id.* at 36-37.) Defendant Feeney assumed that Hearn would then conduct a strip search of plaintiff. (*Ex. B* at 9.) Defendant Feeney was the supervisor. (*Id.* at 19.)
5. Defendant Hearn searched plaintiff's pockets. (*Ex. E*, Deposition of Jean Acloque at 28-29.) A strip search was then conducted by Defendant Hearn. (*Ex. B* at 8; *Ex. A* at 42-43.) Defendant Acloque was present during the search. (*Ex. B.* at 28; *Ex. E* at 35.) Defendant Feeney acknowledges that a strip search was performed. (*Ex. B* at 9.) At least five officers were next to plaintiff during the strip search (*Ex. A* at 62.)

6. The search was conducted in a public alley. (*Ex. A* at 68.) No police report was completed or filed. (*Ex. B* at 16.)
7. Boston Police Department Regulations require that anytime a strip search is done it must be noted where the search is conducted and who performed the search. (*Ex C*, Boston Police Department Regulation 318D.) Officer Feeney admits that he violated this policy by not recording this strip search. (*Ex. B* at 17.) A complaint against Officer Feeney was sustained in another case for failing to put in the police report that a strip search had been conducted as required by Boston Police Department regulations. (*Ex. B* at 17)
8. Several of the individual defendants understood that that Boston Police Department regulations do not permit strip searches, as defined in the regulation, unless conducted either with a warrant or inside the police station. (*Ex. B* at 19-20; *Ex. A* at 41.)
9. None of the defendants wore gloves or even had them in his possession the night of the incident, nor did they normally carry them. (*Ex. B* at 21, 23, 24.)
10. At the time of the incident, other strip searches had been conducted outside of the police station. (*Ex. A* at 45; *Ex. B* at 19-23.) Defendant Feeney had personally been involved in such searches. In another matter where Defendant Feeney was the supervisor, he was disciplined for failing to document a strip search that occurred under his supervision during the execution of a search warrant. (*Ex. B* at 17, 19-20.) Defendant Hearn had also been involved in such searches, "maybe three or four times." (*Ex. A* at 45.)
11. Defendant Hearn used a plastic evidence bag on his hand when he strip searched the plaintiff. (*Ex. A* at 40; *Ex B* at 23.) These bags were recovered on the ground after the incident. Feces was found on these evidence bags. (*Ex. B* at 25.)
12. A body cavity search can only be conducted pursuant to a warrant and done by a physician pursuant to Boston Police Department regulations. (*Ex C*.)
13. Plaintiff alleges that in addition to a strip search, defendant Hearn conducted an anal cavity search. (*Ex. D*, Amended Complaint)

Respectfully submitted,
The Plaintiff Mario Lacy,
By his attorneys,

//S//Jessica D Hedges
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CERTIFICATE OF SERVICE

I, Jessica D Hedges, hereby certify that on this 23rd day of February, 2006, I served a true and correct copy of the foregoing, where unable to do so electronically, by United States First-Class Mail, postage prepaid, as follows: Karen Glasgow, Esq., Jim Chernetsky, Esq., Civil Rights Div/Law Dept, City Hall, Rm 615, Boston, MA 02201.

//S//Jessica D Hedges
Jessica D Hedges